

LYNCH, DESIMONE & NYLEN, LLP

ATTORNEYS AT LAW
12 POST OFFICE SQUARE
BOSTON, MASSACHUSETTS 02109

Telephone: (617) 348-4500
Facsimile: (617) 348-4545

FILE COPY

JOHN M. LYNCH, P.C.
ERNEST P. DESIMONE
RICHARD A. NYLEN, JR.
FREDERICK S. GILMAN
STEPHEN W. DECOURCEY
JOHN P. CARR
SHANNON MICHAUD

OF COUNSEL

JAMES W. MURPHY
WAYNE H. SCOTT

May 21, 2007

John A. Carrigan
Section Chief
Solid Waste Management
DEP – Northeast Regional Office
One Winter Street, 9th Floor
Boston, MA 02108

**Re: In the Matter of New Ventures Associates LLC; Crow Lane Landfill Closure,
Newburyport, MA; FILE NO.: File No.: UAO-NE-07-4003; FMF No. 39545
Request for Provisional Status; Litter Control Plan**

Dear Mr. Carrigan:

Please find enclosed New Ventures Associates LLC's appeal of the Department's Decision approving the Litter Control Plan pursuant to 310 CMR 19.037(4)(b) requesting provisional status. We request that you amend your approval consistent with this letter.

Please contact this office if you have any questions.

Thank you.

Sincerely,


Richard A. Nylen, Jr.

RAN/kad
Enclosure

cc: Mr. William Thibeault, NVLLC
Michael W. Dingle, Esq.
Matthew C. Ireland, Esq.

RECEIVED

MAY 22 2007

DEP

NORTHEAST REGIONAL OFFICE

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of

New Ventures Associates, LLC
Crow Lane Landfill
Newburyport, Massachusetts

File No.: UAO-NE-07-4003
FMF No. 39545

**NEW VENTURES ASSOCIATES LLC'S
APPEAL OF DEPARTMENT'S
DECISION APPROVING LITTER
CONTROL PLAN**

I. INTRODUCTION

This matter involves the filing by New Ventures Associates, LLC ("NVLLC" or "Petitioner") of a Litter Control Plan submitted to the Department of Environmental Protection (the "Department") by the Petitioner for the control of litter at the landfill at Crow's Lane, Newburyport, Massachusetts (the "Property"). The Department approved the plan by mail dated May 2, 2007 (the "Order") but attached conditions that are excessive and do not regulate litter. Petitioner requests, pursuant to 310 CMR 19.037(4)(b), that the Order be deemed provisional as Petitioner objects to the conditions including the requirement that NVLLC places cover on active areas on a daily basis. Petitioner requests that the Department review the conditions because they are excessive and a violation of the Preliminary Injunction (the "Order").

II. BACKGROUND

NVLLC purchased the uncapped, unlined and inactive landfill in April 2000. Following the purchase, NVLLC negotiated and executed an Administrative Consent Order in February 2003 with the Department's Northeast Region which established the requirements for NVLLC to

close the landfill.¹ Additional filings were made with the Solid Waste Section and the Wetlands Section to construct the berm and commence closure. Permits and approvals were issued.

The ACO, SOC and Conceptual Closure Plan approval established the legal obligations of NVLLC with respect to the closure of the landfill. In addition, air quality (odor control) compliance was required due to unanticipated reaction of the closure material with rainwater. Subsequently, the Department and NVLLC executed an Order entered as a Preliminary Injunction (the "Order") in October 2006.

III. ADMINISTRATIVE ORDER

Since the issuance of the Order², NVLLC has been operating the landfill and the pre-treatment process. In April 2007 in furtherance of the Order, the Department issued an Administrative Order requiring NVLLC to prepare a written plan to address blown litter on-site and off-site. The Order required NVLLC to submit a formal plan within seven (7) days. NVLLC submitted its four point written plan on a timely basis to address the blown litter issue raised by the Department. Prior to the submission of the plan, NVLLC filed a force majeure claim seeking relief from the requirement to place tarps on the landfill due to maintenance issues. NVLLC had cleaned up wind blown litter from abutting properties prior to the UAO but returned and removed additional off-site litter upon receipt of the Order.

IV. THE REQUEST FOR PROVISION STATUS

¹ The 2003 ACO and Host Agreement executed with the City regulate the design and operation of the landfill closure including truck routes, times of operation and the number of trucks entering daily.

² The Order has been amended twice.

The Department reviewed NVLLC's Blown Litter Plan and the Department stated that, in its opinion, the litter plan needed further conditions.

NVLLC appeals Conditions 1-3 of the May 2, 2007 decision as follows:

- A. Condition 1 is excessive because it requires the placement of six (6) inches of soil on the inactive portions of the landfill in addition to the tarps. No other landfill in the Commonwealth, to our knowledge, is required to provide this redundancy. NVLLC is in the process of placing the tarps on the inactive areas of the landfill following the force majeure denial. The tarps will control the limited litter. We request that this condition be eliminated.
- B. Condition 2 is excessive because it requires that six (6") inches of soil be placed on active areas of the landfill at the end of each working day. This provision is in direct contravention of and circumvents the Order that was negotiated by the parties in 2006. The placement of additional soil will result in lost air space without any benefits to public health, safety or the environment. We request that this condition be removed.
- C. NVLLC does not object to the inspection of the landfill and abutting areas on a daily basis³ but objects to the requirement that a record be placed and maintained on the premises. We request that this condition be modified.


³ NVLLC will inspect on a daily basis, however, it cannot agree that this will be done at the beginning of each work day. Operational priorities will determine the time of the inspections.

CONCLUSION

Petitioner requests that the Decision be considered a provisional decision and that it be amended as requested.

Respectfully submitted,

NEW VENTURES ASSOCIATES, LLC
By Its Attorney,


Richard A. Nylen, Jr., Esq.
Lynch, DeSimone & Nylen, LLP
Twelve Post Office Square
Boston, MA 02109
Tel: (617) 348-4500
Fax: (617) 348-4545

Dated: May 21, 2007

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